

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Marysville, California)

WESTERN AGGREGATES, LLC 1/

Employer

and

OPERATING ENGINEERS LOCAL  
UNION NO. 3, INTERNATIONAL  
UNION OF OPERATING ENGINEERS 2/

Petitioner

20-RD-2417

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record 3/ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 4/
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 5/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c)(1) and Section 2(6) and (7) of the Act. 6/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 7/

All full-time and regular part-time plant operators, mechanics, equipment operators, laboratory testers and laborers employed by the Employer at its Marysville, California facility; excluding office clerical employees, weighmaster, sales employees, professional employees, managers, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees

who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **OPERATING ENGINEERS LOCAL UNION NO. 3, INTERNATIONAL UNION OF OPERATING ENGINEERS.**

### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before September 9, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by September 16, 2005.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).

Dated September 2, 2005

at San Francisco, California

*/s/ Joseph P. Norelli*

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Acting Regional Director, Region 20

- 1/ The name of the Employer appear as amended at the hearing.
- 2/ The Union's name appears as described in the Decision and Certification of Representative in case 20-RC-17612.
- 3/ I take administrative notice of and include in the record as Board Exhibit 3, the Certification of Representative issued in case 20-RC-17612 wherein the Union was certified as the exclusive representative of the employer's employees in the following unit:

All full-time and regular part-time plant operators, mechanics, equipment operators, laboratory testers and laborers employed by the Employer at its Marysville, California facility; excluding office clerical employees, weighmaster, sales employees, professional employees, managers, guards and supervisors as defined in the Act.
- 4/ No representative of the Union appeared at the hearing. The record reflects that the Union was served with the petition and a notice of representation the hearing by first-class mail on April 11, 2005. The record further reflects that the Union and its attorney were each served with the Order scheduling the Hearing for August 26, 2005 on August 19, 2005. In these circumstances, I find that the decision of the hearing officer to proceed with the hearing in the absence of a representative of the Union did not constitute prejudicial error.
- 5/ The record reflects that the Employer, a Nevada Limited Liability Corporation with places of business in Marysville, California, is engaged in the business of processing and sale of aggregates rocks. During the fiscal year ending March 31, 2005, the Employer purchased materials valued in excess of \$50,000 directly from points outside the State of California and sold materials valued in excess of \$50,000 directly to customers outside the State of California. In these circumstances, I find that the Employer is engaged in commerce and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
- 6/ The record reflects that there is no contract bar to this proceeding.
- 7/ As noted above, I have taken administrative notice of the Certification of Representative issued in Case 20-RC-17718 wherein the Union was certified as the exclusive collective-bargaining representative of the unit. *The Board has long held that the appropriate unit in a decertification election must be coextensive with the certified or recognized unit. Campbell's Soup Co., 111 NLRB 234 (1955). Accordingly, the unit appears as described in the Certification of Representative issued in Case 20-RC-17612.*

There are approximately 25 employees in the unit.